

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4484 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

SURESHBHAI DAHYABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

Shri B.S.Patel, Advocate, for the Petitioners.

Shri T.H.Sompura, Assistant Government Pleader, for Respondent No.1.

Shri H.S.Munshaw, Advocate, for Respondent No.2.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 21/09/96

ORAL JUDGEMENT

This petition is moved under Article 226 of the

Constitution of India for a Writ of Mandamus directing the respondents not to obstruct in any manner the petitioners from development of the land bearing survey Nos.569 and 572 reconstituted as final plots Nos.9 and 10 in Town Planning Scheme No.1 (Vemali) in village Sama taluka Vadodara (the disputed lands for convenience) by and on behalf of the petitioners and not to insist on any permission or approval from any authority for the development of the said lands.

2. It is not necessary to set out in detail the facts giving rise to this petition. The petitioners appear to have obtained the Development Permission from the Vadodara Urban Development Authority (the VUDA for convenience) under the relevant provisions contained in the Gujarat Town Planning and Urban Development Act, 1976 (the TP Act for brief) including under Section 29 (1) thereof. Its copy is at Annexure-D to this petition. Its copy is also annexed with the Reply Affidavit filed by and on behalf of respondent No.2. It appears that the petitioners thereafter undertook the development of the disputed lands by causing to start some construction activity therein. It appears that respondent No.2 herein through its officers and officials caused obstruction at the instance of the concerned Deputy Collector (Land Reforms) at Vadodara on the ground that no N.A.Permission was obtained by and on behalf of the petitioners pursuant to the Development Permission. This is what is stated in the Reply Affidavit by way of defence. The petitioners have thereupon approached this court by means of this petition under Article 226 of the Constitution of India for questioning the correctness of the action on the part of respondent No.2.

3. Learned Advocate Shri Patel for the petitioners has relied on the ruling of this court in the case of KARIMBHAI KALUBHAI BELIM v. STATE OF GUJARAT reported in 1996 (1) Gujarat Law Herald at page 200 in support of his submission that no N.A.Permission would be necessary once the permission under Section 29 (1) of the TP Act is obtained irrespective of the fact that terms and conditions on which such Development Permission is granted include obtaining of the N.A.Permission. As against this, learned Advocate Shri Munshaw for respondent No.2 has submitted that the petitioners are required to comply with all the terms and conditions on which such Development Permission has been granted. Learned Assistant Government Pleader Shri Sompura for respondent No.1 has also submitted practically to the same effect. He has further submitted that Section 117 of the TP Act need not be construed to mean to include

the necessary permission under Section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948 (the Tenancy Act for brief). Learned Advocate Shri Patel for the petitioners at this stage states on instructions that the disputed lands are old tenure lands and not new tenure lands and Section 43 of the Tenancy Act will not be applicable in the present case. In that view of the matter, this question is not decided at this stage.

4. It needs no telling that a ruling of this court is binding to all authorities, judicial, quasi-judicial or administrative, within the State of Gujarat. I am fortified in my view by the binding Division Bench ruling of this court in the case of STATE OF GUJARAT v. THE SECRETARY, LABOUR, SOCIAL WELFARE & TRIBAL DEVELOPMENT DEPARTMENT, SACHIVALAYA, GANDHINAGAR reported in 1982 Gujarat Law Herald at page 55. It has been held therein that a ruling of this court is binding to all authorities concerned within the State of Gujarat and it can be defied or disregarded only at the peril of contempt liability. Sitting as a single Judge, the aforesaid Division Bench ruling of this court is binding to me. Even otherwise, I am in respectful agreement therewith.

5. This court in its aforesaid ruling in the case of KARIMBHAI KALUBHAI BELIM (supra) has clearly held that no permission under Section 65 of the Bombay Land Revenue Code, 1879 would be necessary with respect to a parcel of land once the Development Permission under Section 29 (2) of the TP Act is obtained with respect to that land in view of Section 117 thereof. This court has further held that, even if such condition is incorporated in the Development Permission, it has to be simply ignored. The aforesaid ruling of this court in the case of KARIMBHAI KALUBHAI BELIM (supra) is binding to all authorities. In that view of the matter, if what is stated in the Reply Affidavit is true, the concerned Deputy Collector (Land Reforms) at Vadodara could not have given direction to respondent No.2 for obstructing the construction activity undertaken by the petitioners pursuant to the Development Permission annexed as the annexure to the Reply Affidavit.

6. In view of my aforesaid discussion, I am of the opinion that respondent No.2 was not justified in obstructing the construction activity undertaken by the petitioners herein pursuant to the aforesaid Development Permission despite direction given to him by the concerned Deputy Collector (Land Reforms) at Vadodara. A Writ of Mandamus is therefore required to be issued restraining respondent No.2 from interfering with or

obstructing the construction activity undertaken by the petitioners in the disputed lands pursuant to the aforesaid Development Permission.

7. In the result, this petition is accepted. A Writ of Mandamus is ordered to be issued to respondent No.2 not to obstruct any construction activity undertaken by and on behalf of the petitioners in the disputed lands pursuant to the aforesaid Development Permission. Rule is accordingly made absolute with no order as to costs.

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